

Draft: 1/3/20

Possible additional scenarios

(First paragraph below is in the current Statement draft:)

Following are examples of activities conducted by a company that operates a website offering for sale only items of tangible personal property, unless otherwise indicated. In each case, customer orders are approved or rejected, and the products are shipped from a location outside of the customer's state. The company has no contacts with the customer's state other than what is indicated. [Examples should not be interpreted to mean that other scenarios either are protected or not protected, since every scenario requires a separate assessment of all relevant facts.]

. . .

x. The company offers and sells extended warranty plans via its website to in-state customers who purchase company products. Selling, or offering to sell, a service [that is not entirely ancillary to the solicitation of orders for tangible personal property], such as an extended warrant plan, defeats the company's P.L. 86-272 immunity—see Article I.

y. The company offers for sale only items of tangible personal property on its website. The website enables customers to search for items, read product descriptions, select items for purchase, choose among delivery options, and pay for the items. (The company does not place Internet "cookies" onto customers' computers or engage in other in-state business activities not described in this example). This business activity does not defeat the company's P.L. 86-272 immunity because the company engages exclusively in in-state activities that either constitute solicitation of orders for tangible personal property or are entirely ancillary to solicitation.